Petition

81-2040

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

NO.

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ALEXANDER L. STEVAS,
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W. TAYLOR MOORE, III,

Petitioner,

-vs-

BETTY LOU MOORE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE GEORGIA SUPREME COURT

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QUESTION PRESENTED FOR REVIEW

1. Whether, in a proceeding to Domesticate a foreign state's judgment of Dissolution of Marriage and to modify the child support provisions thereof, the exercise of *in personam* jurisdiction by a state court, over a non-resident casually in the forum state, with no contacts with the forum state, violates Petitioner's right to due process under the Fourteenth Amendment of the United States Constitution.

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NO.

W. TAYLOR MOORE, III,

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-vs-

BETTY LOU MOORE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE GEORGIA SUPREME COURT
JURISDICTIONAL BRIEF

Petitioner, W. Taylor Moore, III, respectfully prays that a writ of certiorari issue to review the denial of Petitioner's Motion to Dismiss for Lack of In Personam Jurisdiction by the Superior Court of Fulton County, State of Georgia, entered December 14, 1981, and the Supreme Court of Georgia's denial of Petitioner's Motion for Immediate Review and Rehearing on January 19, 1982, and February 3, 1982, respectively.

OPINION BELOW

The Orders entered by the Georgia Supreme Court denying Petitioner's Application for Immediate Review and Motion for Rehearing, both based upon the Certificate of Immediate Review from the trial court issued as a result of the trial court's denial of Petitioner's Motion to dismiss for lack of in personam jurisdiction are all contained herein in the Appendix hereto.

JURISDICTION

The judgment of the Supreme Court of Georgia denying the Application for Immediate Review was entered on January 19, 1982. A timely petition for rehearing was denied on February 3, 1982. A Motion to Stay the proceedings on the merits in the trial court is presently pending in the Georgia Supreme Court based upon the filing of this Petition for Writ of Certiorari. The issue presented here, whether mere personal presence in a state is sufficient to vest that state with in personam jurisdiction over the person in a matter unconnected with said presence, is entirely distinct and separate from the merits of the proceeding to domesticate and modify a foreign state's final judgment. Clark v. Williard, 290 U.S. 112, 117-119 (1934).

It is critical that this court review the jurisdictional aspects of this case at this time because, should the trial court proceed under the assumption of having jurisdiction, the Petitioner's Fourteenth Amendment rights will be

violated because he will be forced to defend himself in the Georgia Courts. Further, any domestification and modification of the Florida judgment by the Georgia courts would be invalid without the necessary requisite in personam jurisdiction.[1]

1 The situation herein is identical to that in Kulko v. Superior Court of California in and for the City and County of San Fransisco, 436 U.S. 84 (1978), in which this Court granted the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Respondent, Plaintiff below, and Petitioner, Defendant below, were divorced in Tallahassee, Leon County, Florida, on April 29, 1976. Petitioner was ordered to pay child support in the amount of $175.00 per month for each of three (3) children born of the marriage and $475.00 per month permanent alimony. One child is no longer living and the respondent remarried for a short

period thereby terminating her entitlement to alimony.

On September 18, 1981, Respondent filed a Petition for Domestication of Florida Judgment and Modification of child support in the Superior Court of Fulton County, Georgia. On September 21, 1981, Petitioner had deboarded an airplane at the Atlanta airport for the sole purpose of attending the Southern Federal Tax Conference being held in Atlanta. While securing his baggage, Petitioner was handed a summons and the Petition for Domestication of Florida Judgment and Modification of Child Support. Apart from Petitioner's casual presence in the State of Georgia to attend an educational seminar, he has had no other contacts with the State of Georgia as evidenced by the Affadavit filed in conjunction with his Motion to Dismiss in the trial court. (Appendix D & B).

On December 14, 1981. the Superior Court of Fulton County denied Petitioner's Motion to Dismiss for lack of in personam jurisdiction refusing to inquire into Petitioner's contacts with the State of Georgia. (See Appendix E)

Timely application was made to the Supreme Court of Georgia for Immediate Review of the aforemetioned Order, same being denied on January 19, 1982. (Appendix G). Petitioner's Motion for Rehearing in the Georgia Supreme Court was denied on February 3, 1982. (Appendix H). Having exhausted all remedies in the State of Georgia, Petitioner filed a Motion to Stay on February 12, 1982, in the Georgia Supreme Court while petitioning this Court for a Writ of Certiorari. The Petition for Writ of Certiorari is timely filed.

REASONS FOR GRANTING THE WRIT

PRELIMINARY STATEMENT

The question presented, stating a conflict with decisions of this Court, involves the

exercise of in personam jurisdiction over a non-resident parent, found casually in the state, in an action to domesticate a foreign state's judgment of dissolution of marriage and modify the child support provisions thereof. This is a matter of great importance in that it directly affects the Constitutional limits of personal jurisdiction by a state over a non-resident. This area of the law is unsettled and the courts of the nation are in need of guidance and clarity on this issue.

I. REASONS FOR GRANTING WRIT

The Georgia Court's decision to deny Petitioner's Motion to Dismiss for lack of in personam jurisdiction over a non-resident parent in a proceeding to Domesticate a foreign state's Judgment of Disolution of Marriage and to modify the child support provisions thereof is in direct conflict with the decisions of this Court.

The Supreme Court of Georgia's denial of Petitioner's Application for Immediate Review and Motion for Rehearing of the trial courts denial of Petitioner's Motion to Dismiss for want of in personam jurisdiction, conflicts with this Court's decision in Kulko, supra. In the Kulko case, the parties were married in California and resided their entire married life in the State of New York. A Haitian divorce was obtained in 1972 based upon a stipulation of the parties prepared and executed in New York. The parties' children were placed in the custody of their father who continued to remain in the State of New York. By 1975 the parties' minor children, with the consent of the father, were in the custody of their mother in California, at which time the former wife instituted suit in California to domesticate the Haitian decree and to modify the child support provisions contained therein. The

former husband's contacts with California included two (2) brief sojourns into the state, on one of which he and the mother were married. The trial court denied the defendent's Motion to Dismiss which was based upon lack of in personam jurisdiction. This Court held that minimum contacts were lacking and that California did not have jurisdiction over the former husband. The Court went on to say that to subject the former husband to the jurisdiction of the state court because of his temporary visits to the forum state "would make a mockery of the limitations on state jurisdiction imposed by the Fourteenth Amendment." (at 93).

In the instant case, the Petitioner's contact with the State of Georgia was similarly temporary. This, standing alone, is not sufficient to meet the requirement that the quality and nature of activities be such that it would be reasonable and fair to require him to

defend in the forum state. McGee v. International Life Insurance Company, 355 U.S. 720 (1957); Kulko, supra; Shaffer v. Heitner, 433 U.S. 186 (1977); International Shoe Company v. Washington, 326 U.S. 310 (1945). In the case at bar, because of controlling precedent set forth by the Georgia Supreme Court in Humphrey v. Langford, supra, the trial court did not inquire into the minimum contacts of the former husband with the State of Georgia although recognizing that the issue presented herein is one that needs to be settled by this Court.

Further, Petitioner and Respondent were not married in the forum state as they were in Kulko, supra. Rather they were married in the State of Florida, cohabitated their entire married life in Florida, bore and raised three (3) children in Florida, were divorced in Florida, and Florida remains the home of the Petitioner. This shows

an even greater remoteness between Petitioner and the State of Georgia.

Although in Kulko, supra, the father was served via a long-arm statute and in the instant case the father was served personally in the forum state, the same result should follow. In practicality, service of process is designed to give notice of an event and does not necessarily vest the Court with jurisdiction. This point has been recognized by the Georgia Supreme Court. Bentley v. Bentley, 247 Ga. 85, 274 S.E.2d 338 (1981).

The holding in Kulko, supra, should logically extend within the confines of the Fourteenth Amendment to one served within the forum state while casually present there since the reasoning in Kulko, supra, was based upon the decision of Hanson v. Denckla, 357 U.S. 235, 253 (1958), which held that there must be some act by which the defendant purposefully avails himself of the privileges of conducting business in the

forum state. Thus, it would violate traditional notions of fair play and substantial justice and conflict with the decisions of this Court to uphold in personam jurisdiction based upon a person's casual presence within the forum state. Further, to allow jurisdiction under such circumstances would impede the right to travel and discourage visitation with the children of the marriage.

This Court in Hanson, supra at 251, and International Shoe, supra, has warned against such unnecessarily broad extensions of jurisdiction by stating that the flexible standard of jurisdiction does not herald the eventual demise of all restrictions on the personal jurisdiction of the state courts. See also Kulko, supra at 101. Also, this Court held in Shaffer, supra, that the casual presence of property in a state is not enough to subject one to in personam jurisdiction. The reasoning of

the Court was that the casual presence of the property in the state, alone, did not meet the minimum contacts test. Thus, the logical extension of Shaffer would be that the casual presence of a person in a state, alone, is not enough to satisfy the test for in personam jurisdiction.

In the instant case, to hold that the casual presence of the Petitioner in Georgia, alone, satisfies the minimum contacts requirement for assertion of in personam jurisdiction would violate traditional notions of fair play and justice. World Wide Volkswagen Corporation v. Woodson, 444 U.S. 286 (1980). The Georgia Supreme Court implicitly adopted the rationale of Shaffer, set forth above, when it held that being served with a summons did not, in itself, satisfy personal jurisdiction and venue requirements. Bentley v. Bentley, 274 S.E.2d 338, 247 Ga. 85 (1981).

Furthermore, if it is determined that entering a state on a casual basis satisfies the minimum contacts test of International Shoe, supra, then entering the state for the purpose of exercising visitation rights would clearly satisfy the test. Such a holding would be in direct conflict with this Court's decision in Kulko, supra, where this Court stated:

> ... to find jurisdiction in a State on this basis, merely because the mother was residing there, would discourage parents from entering into reasonable visitation agreements...(and) it could arbitrarily subject one parent to suit in any state of the Union where the other parent chose to spend time while having custody of their offspring...(at 93).

Also, the Georgia Court's holding conflicts with Kulko, supra, wherein a distinction is made between domestic relations and commercial cases. This Court was unwilling to stretch the limits of jurisdiction as far in domestic matters as in

commercial ones in Kulko. Thus, the unwarranted extension of jurisdiction in the present case by the State of Georgia is in direct conflict with the standards set by this Court.

Furthermore, should this Court rule that the Courts of Georgia do not have jurisdiction over the Petitioner, the Respondent is not without a forum. The amount of child support payable under the Florida judgment is subject to modification on a continuing basis in Florida. In fact, Respondent has, subsequent to the original divorce decree, sought the assistance of the Florida courts in matters relating to the parties marital property and financial obligations.

Lastly, in Kulko, supra, the Court also looked to issues of convenience to the parties and stated:

> ...basic considerations of fairness point decisively in favor of Appellant's state of domicile as the proper forum for adjudication of this case, whatever the merits of Appellee's underlying claim.

> It is the Appellant [Father] who has remained in the state of the marital domicile, whereas it is Apellee [Mother] who has moved...(at 97).

In the instant case, it is the Petitioner who has never left the marital domicile. All of his assets, banks, custodial record keepers and witnesses to testify as to his financial status are located in Florida. Further, enforcement of any court order would be prosecuted in Florida where the petitioner and all his assets are situated. Therefore, the Georgia Court's holding, in this case, ignores conflicts with the convenience doctrine stated by this Court in Kulko.

Based on the reasons stated above, the exercise of in personam jurisdiction by the courts of Georgia would violate the due process afforded Petitioner under the Fourteenth Amendment of the United States Constitution and the tests to insure Constitutional adherence established in International Shoe, supra and its progeny.

REASON II

The Georgia Supreme Court has decided an important question of federal law which has not been, but should be settled by the Supreme Court of the United States.

In Humphrey v. Langford, 246 Ga. 732 (1980), the Supreme Court of Georgia correctly noted that the issue herein is one that this Court has not completely settled. With the increase of the American population, the even heighting divorce rate and the mobility that Americans enjoy, the issue is one of national scope and interest. Therefore, it is of great importance that this Court give the guidance requested and has jurisdiction to do so pursuant to Rule 17.1(c) of the Supreme Court Rules.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

BETTY LOU MOORE,	)	
Plaintiff	)	CIVIL ACTION
V.	)	FILE NO. C79590
W. TAYLOR MOORE, III	)	
Defendant	)	

PETITION FOR DOMESTICATION OF FLORIDA JUDGMENT AND MODIFICATION OF CHILD SUPPORT

COMES NOW the Plaintiff, BETTY LOU MOORE, and shows the Court the following:

1.

Plaintiff shows that she is a resident of Fulton County Georgia, and that Defendant is a resident of Florida and is sojourning in Fulton County, Georgia, where he may be served. Defendant is, therefore, subject to the jurisdiction of this Court.

2.

Plaintiff shows that she and the Defendant

were formerly wife and husband and were divorced by Final Judgment of Dissolution of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, on April 29, 1976, a copy of which is attached to this Petition as Exhibit "A". Plaintiff shows that there are two (2) living children born of the previous marriage of the parties, to-wit: Deborah Elizabeth Moore and Angela Leigh Moore, and that as a part of the Final Judgment, Case No. 75-2739, dated July 30, 1976, the Defendant herein was ordered to pay to the Plaintiff a sum which included allocation of $175.00 per month for the support of each child.

3.

Plaintiff shows that since July 30, 1976, there has been substantial and material upward change in the finanacial circumstances and income of the Defendant and that the Defendant is now financially able to pay an increased amount of child support which more adequately meets the needs of the Plaintiff for said minor children, and that said change upward in the Defendant's

income and financial status is sufficient to warrant the upward modification of said Final Judgment and Decree.

4.

Plaintiff shows that the provisions of said Judgment and Decree entered by the Court of July 30, 1976, should be modified to conform with the Defendant's current financial circumstances and capabilities.

5.

There has been no previous Petition for Modification filed within two (2) years of this Petition.

WHEREFORE, Plaintiff prays:

(a) That the foreign judgment annexed hereto as Exhibit "A" be domesticated and made the judgment of this Court.

(b) That this her Petition for Modification of Final Judgment be allowed filed;

(c) That process issue requiring the Defendant to be and appear as prescribed by law to answer this Complaint;

(d) That the provisions of the Final Judgment of the Florida Court for child support be temporarily and permanently modified upward in accordance with the current financial circumstances and ability to pay of the Defendant;

(e) That a Rule Nisi issue requiring the Defendant to appear and show cause why the Plaintiff should not be granted the temporary relief requested; and

(f) That Plaintiff have and recover a reasonable sum for the use of her attorney, Michael R. Lewis, for the filing and prosecution of this action; and

(g) For such other and further relief as to this Court seems equitable and just.

Respectfully submitted,

/s/

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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

BETTY LOU MOORE,

Plaintiff,

vs. CIVIL ACTION FILE NO.

C 79590

W. TAYLOR MOORE, III,

Defendant. /

MOTION TO DISMISS

COMES NOW the Defendant, W. Taylor Moore, III, by and through his undersigned attorneys, and Specially Appears for the purpose of contesting the jurisdiction of this Court in accordance with Georgia Code Annotated §81A-112(h)(1), and hereby moves this Court to dismiss the Petition filed herein and as grounds therefor would state:

1. This Court does not have jurisdiction over the person of the Defendant.

2. A Memorandum of Law and an Affidavit from the Defendant are filed herewith in support of this Motion to Dismiss.

WHEREFORE the Defendant moves this Court to dismiss the Plaintiff's Petition for Domestication of Florida Judgment and Modification of Child Support with prejudice.

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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

BETTY LOU MOORE,

Plaintiff CIVIL ACTION

vs. FILE NO. C 79590

W. TAYLOR MOORE, III

Defendant

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

FACTS

Betty Lou Moore, hereinafter referred to as the Plaintiff, and W. Taylor Moore, III, hereinafter referred to as the Defendant, were divorced in Tallahassee, Leon County, Florida on April 29, 1976. Defendant was ordered to pay child support of $175.00 per month for each of three (3) children born of the marriage. One child, John, is no longer living.

On September 21, 1981, the Defendant had deboarded an airplane at the Atlanta airport for the purpose of attending the Southern Federal Tax conference being held in Atlanta. While securing

his baggage, the Defendant was handed a summons and Petition for Domestication of a Florida Judgment and for Modification of Child Support which is the subject of this proceeding.

Apart from the Defendant's attendance at this educational seminar, he has had no other contacts with the State of Georgia as evidenced by his Affidavit attached hereto and by reference made a part hereof.

ISSUE

THE SUPERIOR COURT OF THE STATE OF GEORGIA DOES NOT HAVE IN PERSONAM JURISDICTION OVER THE DEFENDANT FOR THE PURPOSE OF DOMESTICATING A FLORIDA JUDGMENT OF DISSOLUTION OF MARRIAGE AND MODIFYING THE PROVISIONS THEREOF REQUIRING PAYMENT OF CHILD SUPPORT.

The issue of in personam jurisdiction over a nonresident of a state has been one of growing importance over the past one hundred years. It is clear that a valid judgment imposing a personal obligation or duty in favor of a plaintiff as against a nonresident defendant may

be entered only by a court having jurisdiction over the person of the defendant. Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565 (1878); International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

In determining the point at which a court acquires in personam jurisdiction, a two part test has emerged. The test, as announced by the United States Supreme Court, is:

a) The presence of reasonable notice to the defendant that an action has been brought, and

b) whether a sufficient connection between the defendant and the forum state make it fair to require a defense of the action in the forum state.

Kulko v. Superior Court of California In and For the City and County of San Francisco, 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978); Mullane v. Central Hanover Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950);

Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278 (1940).

The Defendant, in the matter at bar, does not dispute the adequacy of notice. He contends, however, that even though he has received reasonable notice, he lacks minimum contacts with the State of Georgia required by the Due Process Clause of the United States Constitution as set forth in the two part test cited above. Specifically, the Defendant's connection with the State of Georgia is so attenuated and remote that the second requirement of the Due Process test is not met.

The paramount inquiry is whether the "quality and nature" of the Defendant's activities are such that it is reasonable and fair to require him to conduct a defense in the forum state. McGee v. International Life Insurance Co., 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed. 223 (1957); Kulko, supra; International Shoe, supra; Shaffer v. Heitner, 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977); Perkins

v. Benquet Mining Co., 342 U.S. 437, 72 S.Ct. 413, 96 L.Ed. 485 (1952).

The facts of each case must be considered to determine whether the minimum contacts test enunciated in International Shoe, supra, is met. See Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958). The Defendant's only contact with Georgia is his presence in Atlanta to attend a educational seminar. It is respectifully submitted that the application of the minimum contacts test in the case before the bar, if found to have been met, would represent an unwarranted estension of International Shoe and would result in a sanction that is neither fair, just, nor reasonable. Kulko, supra at 1697. Seminars are offered through the United States and an individual's presence at any given location should not, ipso facto, provide that state with jurisdiction to determine child support rights.

The most recent case dealing with the issue of a domestic modification involving a

nonresident defendant is Kulko, supra. In Kulko, the parties were married in California and resided their entire married life together in New York. A Haitian divorce was obtained in 1972 based upon stipulation and agreement of the parties prepared and executed in New York. By stipulation, the parties' minor children were to reside with the father in New York and visit with the mother in California, the state in which she established her residency subsequent to the parties' separation. By 1975 the parties' minor children were in the custody of their mother in California with the acquiesence of the father at which time the former wife instituted suit in California to domesticate the Haitian decree and to modify support and custody agreement contained therein. The defendant father's contacts with California included two brief sojourns into the state, but on one of those trips he married the Plaintiff. The former husband stipulated to reasonable notice of the proceeding but

maintained that he did not have the necessary minimum contacts to be subjected to the jurisdiction of the California court.

The United States Supreme Court in Kulko, held that California did not have jurisdiction over the former husband and stated that to subject him to the jurisdiction of the court because of his temporary visits to the forum state "would make a mockery of the limitations on state jurisdiction imposed by the Fourteenth Amendment". (at 1697). In the case sub judice the Defendant's presence in the state was similarly temporary. As set forth in the Defendant's attached Affidavit, his only contact with the State of Georgia was the attendance at an educational seminar. Moreover, in Kulko the defendant had actually been married in the forum state. In this case the parties were married in the State of Florida, where the Defendant still resides.

The fact that the ex-wife of the Defendant chose to move to Georgia should also be

insufficient to vest this Court with in personam jurisdiction over the Defendant. The Kulko court spoke to this argument and held:

> "...to find personal jurisdiction in a state on this basis, merely because the mother was residing there, would discourage parents from entering into reasonable visitation agreements ...(and) it could arbitrarily subject one parent to suit in any state of the Union where the other parent chose to spend time while having custody of their offspring" (at 1697).

The polestar, as reemphasized in Kulko, supra, based on Hanson, supra, is the requirement that there be some act by which the defendant purposefully avails himself of the priviledge of conducting business in the forum state. At 1698. Georgia law follows this rule. See Shellenberger v. Tanner, 227 S.E.2d 2ob (Ct.App.3, 1976).

In the instant matter the Defendant has not commited any act or transacted any business sufficient to provide the necessary minimum contact. As stated in Kulko, supra:

> "...the cause of action herein asserted arises not from the defendant's commercial transation in interstate commerce, but rather from his personal,

> domestic relations. It thus cannot be said that the appellant has sought a commercial benefit from solicitation of business from a resident that could reasonably render him liable to suit in state court." At 1699.

The United States Supreme Court in International Shoe, supra, and Hanson, supra, cautions the states, holding that "the flexible standard" does not "herald the eventual demise of all restrictions on the personal jurisdiction of state courts." See also Kulko, supra, at 1701.

Lastly, should the Court rule that it does not have jurisdiction over the Defendant, the Plaintiff is not without a forum. The Florida judgment is subject to modification on a continuing basis as to support payments and the courts of Leon County, Florida, are available to the Plaintiff. In fact, Plaintiff has, subsequent to the original divorce decree, sought the assistance of those courts in matters relating to the parties' marital property and financial obligations. In Kulko the court looked also to issues of convenience to the parties.

(at 1699). The Defendant herein has never left the marital domicile. All the Defendant's custodial record keepers, banks, assets, and witnesses necessary to fully determine the Defendant's financial status are located in Florida. Further, enforcement of any Court Order would, in the instant case, be prosecuted in the State of Florida where the Defendant and all his assets are situated.

In Bentley v. Bentley, 274 S.E.2d 338, 247 Ga. 85 (1981) the Georgia Supreme Court recognized the minimum contacts requirement, holding:

> "Although being handed a summons and complaint by a sheriff may satisfy the requirements of personal service, Code Ann. §81A-104, it does not necessarily satisfy personal jurisdiction and venue requirements." (at 338).

Therefore, in accordance with the factual basis of the matter before the Court and with the pronouncements set forth by both the United States Supreme Court and the Supreme Court of Georgia, the Defendant respectfully prays that

the Petition filed in this matter be dismissed with prejudice.

/s/
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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

BETTY LOU MOORE,

Plaintiff,

vs. CIVIL ACTION FILE NO. C 79590

W. TAYLOR MOORE, III,

Defendant.

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF LEON

BEFORE ME the undersigned authority personally appeared W. TAYLOR MOORE, III, who upon being duly sworn deposes and states:

1. My name is W. Taylor Moore, III, and I reside at 909 Timberlane Road, Tallahassee, Leon County, Florida, 32312.

2. I am an attorney admitted to the practice of law in the State of Florida and I maintain an office for the practice of law at 2017 Delta Boulevard, Tallahassee, Leon County, Florida, 32303.

3. I have never practiced law in the State of Georgia.

4. I am a life-long resident of Leon County, Florida.

5. I have not owned and presently do not own any real or personal property in the State of Georgia.

6. I have not entered into any contracts nor been the maker nor obligor on any promissory note or mortgage in the State of Georgia.

7. I am not an officer, stockholder, director or partner in any business interest in the State of Georgia.

8. I have no bank accounts in the State of Georgia.

9. I am not a judgment debtor on any judgments issued by the Courts of the State of Georgia.

10. I have not in my personal or business capacity sued or been sued in the State of Georgia with the sole exception of the matter in which this Affidavit is submitted.

11. My only contact with the State of Georgia has been my attendance at the Southern Federal Tax Conference in Atlanta, Georgia.

12. Within the last year my ex-wife, Betty Lou Moore, joined me in a Leon County circuit court action involving debt on property that was awarded to her in our April 29, 1976 dissolution of marriage.

13. All my assets, financial records, witnesses and custodians of my records, partners, shareholders, and my new family are in the State of Florida.

FURTHER AFFIANT SAYETH NOT.

/s/
W. TAYLOR MOORE, III

SWORN TO AND SUBSCRIBED before me this 20th day of October, 1981 by W. Taylor Moore, III.

/s/
NOTARY PUBLIC
My Commission Expires:

August 13, 1982

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

BETTY LOU MOORE,

Plaintiff CIVIL ACTION

vs. FILE NO. C-79590

W. TAYLOR MOORE, III

Defendant.

ORDER

Defendant's Motion to Dismiss Plaintiff's Petition for Domestication of Final Judgment and Modification of Child Support coming on to be heard before this Court, and after hearing the evidence and argument of counsel;

IT IS HEREBY CONSIDERED, ORDERED AND ADJUDGED that Defendant's Motion to Dismiss Plaintiff's Petition is hereby denied.

IT IS HEREBY CONSIDERED, ORDERED AND ADJUDGED that Plaintiff's Motion to Compel Discovery is hereby stayed until further order of this Court.

SO ORDERED, this 14th day of December, 1981.

/s/

RALPH H. HICKS, JUDGE
Superior Court of Fulton County

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

BETTY LOU MOORE,	)	
Plaintiff,	)	CIVIL ACTION
vs.	)	FILE NO. C-79590
W. TAYLOR MOORE, III,	)	
Defendant	)	

CERTIFICATE OF IMMEDIATE REVIEW

Upon application by the defendant, W. TAYLOR MOORE, III, and for good cause shown, and it being the opinion of this Court that this Court's Order of December 4th, 1981, in which the Defendant's Motion to Dismiss was overruled, it being of such importance to the case that immediate review should be had, this Court hereby certifies that the aforesaid Order for immediate review in accordance with Georgia Laws, 1965, page 18; 1968, pages 1072, 1073, codified as Georgia Code Annotated, Section 6-701.

The holding of this Court which is certified for immediate review is as follows:

> In personam jurisdiction over a non-resident defendant in a suit to domesticate a foreign state's final judgment of divorce and child support and to modify the child support provisions thereof is obtained when the non-resident defendant is personally served within the State of Georgia while voluntarily within the State. Under these circumstances no inquiry into the minimum contacts of the non-resident defendant with the State of Georgia is necessary and, as such, no such inquiry has been made by this Court. This Court relies upon Humphrey v. Langford, 246 Ga. 732 (1980), distinguishing Bentley v. Bentley, 274 Ga. 85 (1981).

All further proceedings in this case are hereby stayed until this action is reviewed and determined by the appellate court or the appellate court declines to entertain this interlocutory appeal or until this Court enters a further order on the subject, whichever first occurs.

This Certificate of Immediate Review is entered within ten (10) days of this filing of theaforesaid Order on December 14th, 1981.

/s/
RALPH H. HICKS, JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Application No. 1916

SUPREME COURT OF GEORGIA

Atlanta January 19, 1982

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

W. TAYLOR MOORE, III V. BETTY LOU MOORE

Upon consideration of the application for discretionary appeal filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA,

Clerk's Office Atlanta,

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Joline B. Williams, Clerk.

Application No. 1916

SUPREME COURT OF GEORGIA

Atlanta February 3, 1982

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

W. TAYLOR MOORE, III V. BETTY LOU MOORE

Upon consideration of the Motion for Reconsideration filed in this application, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA,

Clerk's Office Atlanta,

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Hazel Hallford, Deputy Clerk.

Opposition

RECEIVED
JUL 15 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

CASE NO. 81-2040

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

W. TAYLOR MOORE, III,

Petitioner

V.

BETTY LOU MOORE,

Respondent

ON WRIT OF CERTIORARI

TO THE GEORGIA SUPREME COURT

BRIEF IN OPPOSITION BY RESPONDENT

MICHAEL R. LEWIS
295 Azalea Drive
Roswell, Georgia 30075
Tel. (404) 237-2934

Counsel for Respondent

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JURISDICTION

Rule 17.1(a) of the Rules of the Supreme Court is not applicable since no federal courts below rendered a decision in this case.

Rule 17.1(b) of the Rules of the Supreme Court does not confer jurisdiction upon this Court because a state court of last resort did not decide a federal question at all. It simply denied the application for immediate review and motion for rehearing. Whatever the merits of Petitioner's contention, it is not ripe for review by this Court. If Petitioner prevails following a trial on the merits, his contentions will be moot. If, on the other hand, Petitioner does not prevail, he will then be able to present his contention to this Court in a Petition for a Writ of Certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the decision of the Supreme Court of Georgia denying an interlocutory appeal would be premature at this time. In any event, the decision of the Supreme Court of Georgia was not in conflict with the decision of another state court of last resort or of a federal court of appeals.

As to Rule 17.1(c) of the Rules of the Supreme Court, no federal court below was involved in this case, and the state court did not decide a federal question in a way in conflict with applicable decisions of this Court.

The situation herein is not identical to that in Ku. o v. Superior Court of California in and for the City and County of San Francisco, 436 U.S. 84 (1978). In Kulko, personal service was not perfected upon the individual while he was personally and physically present in the foreign state. Further, there is no state court decision of federal law which has not been, but should be, settled by this Court.

STATEMENT OF THE CASE

In addition to the facts cited in Petitioner's "Statement of the Case", it is important to point out that Petitioner is at this time $13,300 in arrears for child support payments as shown in Respondent's Amendment (Appendix "B").

Even though "minimum contacts" are not required to obtain in personam jurisdiction when a person is personally served in the state, Petitioner did, indeed, have more than casual presence in the airport in the State of Georgia. He was attending the Southern Federal Tax Conference in Atlanta, Georgia, which he has regularly attended for years as an integral part of his legal and accounting practice. In personam jurisdiction is thereby invested in the State of Georgia and Fulton County on the basis of "minimum contacts".

Petitioner concedes the adequacy of notice he received. Certainly there was a sufficient connection between the Petitioner and the forum State of Georgia by both his personal physical presence in Georgia and his regular professional contacts in the State of Georgia.

REASONS FOR DENYING THE WRIT

PRELIMINARY STATEMENT

The question presented does not state a conflict with the decisions of this Court from a decision of a state court of last resort. The Supreme Court of Georgia has not offered a decision on this question. Therefore, it would be premature for this Court to grant a Writ.

In any case, the lower state court did not decide a question in conflict with the decisions of this Court. The non-resident in this instance was personally served while in the state of his own volition, in an action to domesticate a foreign

state's judgment of dissolution of marriage and to modify the child support provisions and to compel payment of $13,300 arrearages in child support provided for therein.

Before this Petition for a Writ was filed, the Supreme Court of the State of Georgia granted a Stay in the original action below (Appendix "A"), pending a decision from this Court on the Writ. In the meantime, Respondent's older daughter, Deborah Moore, will reach age eighteen in November, 1982, and her other daughter, Angela Moore, will reach age eighteen in February, 1985. The State of Georgia has exercised very reasonable limits of personal jurisdiction over non-residents in a well settled area of law. To continue to allow this non-custodial parent to "run out the clock" on his daughters would be a grave miscarriage of justice.

REASON I

It would be patently unfair to subject the custodial parent and the minor children in this case, and thousands more like them. to not only the additional expense of such extensive appellate procedures when they are already in financial difficulties, but to the painful frustration of waiting and watching the clock run out on their cause of action as the children reach majority. Such would be the case here if the affluent non-custodial parent is allowed to delay adjudication of the basic cause of action by seeking a review of an interlocutory ruling and reducing his liability for support of his children each day he can forestall the hearing on the basic issue until no cause of action for modification of child support remains. Unless the courts below are allowed to proceed to final judgments upon the merits of each case such as this one, thousands upon thousands of needy custodial parents and their minor children will be foreclosed from seeking justice, without recourse, and would be irreparably

harmed. On the other hand, if the court below were allowed to go forward to a final judgment, Petitioner would not suffer because even if he received an unfavorable decision below, any action on that final decision could appropriately be stayed pending appeal at that time.

Petitioner relies on Kulko, supra, to show a conflict. Where Kulko says "to find personal jurisdiction in a State on this basis", it should be noted that "this basis" does not refer to personal service perfected upon a defendant within the foreign state. In Humphrey v. Langford, 246 Ga. 732 (1980), the Supreme Court of Georgia squarely decides the issue before us by holding "that presence is still a sufficient basis for jurisdiction" and "when an individual is personally served within the state, we are talking about actual presence. Minimum contacts analysis is not necessary. It could be forcefully argued, however, that personal presence in a state fulfills the minimum contacts requirement." In deciding this issue, the Supreme Court of Georgia takes notice of Kulko, supra; World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); and International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), relied upon in Petitioner's argument, distinguishing the fact that in those cases the defendants involved were not personally served within the foreign state. The Supreme Court of Georgia further takes notice in Humphrey of Shaffer v. Heitner, 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977), showing that in this case as well there was no personal service on the defendant in the foreign state.

The Court in Humphrey, supra, develops the concept of "minimum contacts" by quoting from International Shoe, supra, as follows:

> ". . .due process requires only that in order to subject a defendant to a judgment in

> personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'." (Emphasis added)

The opinion notes, "As this quoted language indicates, International Shoe does not cast doubt on the notion that presence is still a sufficient basis for jurisdiction, it simply states a rule of 'minimum contacts' as an alternative to 'presence'." In Humphrey, the Supreme Court of Georgia shows that its rulings that, "The venue is where the defendant is of his own volition and is served." is consistent for over a hundred years citing Campbell v. Campbell, 67 Ga. 423 (1881). Its opinion goes on to state "This sovereign state has an adequate court system and is capable of rendering justice between litigants as well as any court system." It is interesting to note, however, that Georgia gives full faith and credit to divorce judgments obtained under our sister state, Florida, extra territorial service of process (Long Arm Statute), West's Florida Statutes Annotated, Sections 48.193(1)(e), 48.194, which operates much more extensively (over the entire United States) than Georgia's personal service so vigorously complained of by Petitioner. Whitaker v. Whitaker, 237 Ga. 895, 230 S.E.2d 486 (1976).

The Trial Court properly distinguishes Bentley v. Bentley, 247 Ga. 85, 274 S.E.2d 338 (1981), from the instant case. The issue in Bentley was whether or not South Carolina could obtain personal jurisdiction over the husband who was "personally served" in Georgia, not whether a Georgia Court could obtain jurisdiction by personal service on a defendant while he was in Georgia.

Discouragement of visitation by the non-custodial parent with the children he or she is obligated to support would not appear to be at issue in the instant case inasmuch as

Petitioner has never visited his children in Georgia. In any event, Georgia's well-established jurisdiction over non-residents who are personally served in Georgia does no more than put non-resident, non-custodial parents in the same status regarding their obligations to their children as resident, non-custodial parents find themselves in. The children of the parties continue to require support and maintenance from both parents no matter where they reside.

Typically, this action has been brought in behalf of the minor children of the parties, whose maintenance and support needs are not being met. The custodial parent does not have enough resources to contribute any more, and the non-custodial parent has the necessary resources which he withholds. Therefore, as is so often the case, it would be much more burdensome, if not impossible, for Respondent to bring suit in Florida due to her lack of financial resources. If, in fact, it would be more expensive to decide this issue in a foreign state, Respondent, if so required, would be foreclosed, in the practical sence, from seeking relief for her daughters, while their father could avoid his responsibility by simply withholding his resources.

REASON II

There is no need for this Court to review the question of law proposed in this Petition. In fact, for this Court to do so would impose a burden so great upon Respondent as to effectively prevent she and her minor daughters from seeking justice before the Courts.

Respondent, like so many custodial parents along with their minor children all over our country, finds herself in an almost impossible situation. The Court below made provision for child support years ago. Petitioner did not pay the amount of

child support he was ordered to pay. The current needs of the minor children are even greater today than they were at the time of the award, but the financial position of the custodial parent has worsened, while that of the non-custodial parent has improved.

As the needs of the minor children increase and the financial means of the custodial parent deteriorates, their ability to enforce the prior decree and seek upward modification is greatly impaired by their very financial crisis. So, the greater their needs, the less their ability to obtain relief through our legal system.

They do not need the additional burden of a continued appeal process which effectively forces them to capitulate and give up their suit for relief because their meager funds are drained away.

Ultimately, to delay a final judgment in the courts below in this fashion tends to remove productive and potentially productive citizens from the roll of taxpayers and add them to the growing list of people requiring financial aid from our government.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Michael R. Lewis

MICHAEL R. LEWIS,
Counsel for Respondent

295 Azalea Drive
Roswell, Georgia 30075
Tel. (404) 237-2934

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Applic. No. 1916

SUPREME COURT OF GEORGIA

ATLANTA, February 16, 1982

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

W. TAYLOR MOORE, III V. BETTY LOU MOORE

Upon consideration of the Motion for Recall and Stay of Remittitur filed in this matter, it is ordered that it be hereby granted.

It is further ordered that any judgment entered on this remittitur by the Superior Court of Fulton County should be vacated and the original trial court be notified, and the remittitur be returned to this Court.

SUPREME COURT OF THE STATE OF GEORGIA,

CLERK'S OFFICE, ATLANTA,

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Johnie B. Williams Clerk.

APPENDIX "A"

FILED IN OFFICE

FEB 8-1982

DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY GEORGIA

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

BETTY LOU MOORE, Plaintiff	)	
V.	)	CIVIL ACTION FILE NO. C-79590
W. TAYLOR MOORE, III, Defendant	)	

PLAINTIFF'S SECOND AMENDMENT TO PETITION

NOW, prior to any Pre-Trial Order in the above-styled action, COMES BETTY LOU MOORE, Plaintiff in such action, and amends her Petition as follows:

1.

By adding to the Petition as paragraph 8 the following:

"8.

"Plaintiff shows that while she was awarded custody of the three (3) minor children of the parties, Defendant did not pay the ordered $175.00 per month, per child, for support of said minor children for the periods shown below and amounting to the arrearages indicated:

MINOR CHILD	FROM	TO	NO. OF MONTHS	ARREARAGE
JOHN MOORE	5/78	2/80	22	$ 3,850
DEBORAH MOORE	6/78	10/79	16	$ 2,800
ANGELA MOORE	7/78	8/81	38 (Less 13 weeks, $525, claimed in prior Amendment)	$ 6,125
TOTAL ARREARAGE.....				$12,775"

2.

By adding to the Petition as subparagraph (i) of Plaintiff's prayers the following:

"(i) That Plaintiff have and receive $12,775.00 for past due child support payments for the periods noted in paragraph 8 (added by Amendment)."

WHEREFORE, Plaintiff prays that her Petition be amended as aforesaid.

/s/
MICHAEL R. LEWIS,
Attorney for Plaintiff

295 Azalea Drive
Roswell, Georgia 30075
Tel. (404) 992-4587

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 5th day of January, 19 82

Michael R. Lewis
Attorney for Plaintiff

STATE OF GEORGIA

COUNTY OF FULTON

AFFIDAVIT

PERSONALLY appeared before the undersigned officer, duly authorized to administer oaths, BETTY LOU MOORE, who, being duly sworn, deposes and says on oath that the facts set forth in the foregoing Second Amendment to Petition are true and correct to the best of her knowledge and belief.

This 5th day of February, 1982.

/s/
BETTY LOU MOORE

SWORN to and subscribed
before me this 5th day
of February, 1982.

Michael R. Lewis
NOTARY PUBLIC

Notary Public, Georgia, State at Large
My Commission Expires Jan 26, 1984

SUPREME COURT OF THE UNITED STATES

W. TAYLOR MOORE, III,	)	
	)	
Petitioner	)	
	)	
V.	)	CASE NO. 81-2040
	)	
BETTY LOU MOORE,	)	
	)	
Respondent	)	

NOTICE OF MAILING

STATE OF GEORGIA
COUNTY OF FULTON

BEFORE ME, the undersigned authority, personally appeared MICHAEL R. LEWIS (hereinafter referred to as "Affiant"), who, being by me first duly sworn, on oath says:

1. Affiant is admitted to practice before the United States Supreme Court and is in good standing therewith.

2. Affiant duly delivered the Brief in Opposition to Petition for Certiorari, and Certificate of Service to the United States Post Office, Atlanta, Georgia, with Express Mail postage prepaid, and addressed to the Office of the Clerk, Supreme Court of the United States of America, Washington, D.C., 20543.

3. Affiant timely delivered said items to said Post Office on July 14, 1982.

4. This Brief in Opposition to Petition for Certiorari is timely filed.

FURTHER, Affiant saith not.

Michael R. Lewis
MICHAEL R. LEWIS

SWORN to and subscribed before me by MICHAEL R. LEWIS this 14th day of July, 1982.

Kathleen L. Thompson
NOTARY PUBLIC
Notary Public, Georgia, State at Large
My Commission Expires 2-25-84

SUPREME COURT OF THE UNITED STATES

W. TAYLOR MOORE, III,	)	
Petitioner	)	
V.	)	CASE NO. 81-2040
BETTY LOU MOORE,	)	
Respondent	)	

CERTIFICATE OF SERVICE

COMES NOW the Respondent, BETTY LOU MOORE, by and through her undersigned attorney, and certifies that, pursuant to Rule 28.3 of the Supreme Court Rules, the Respondent has furnished three copies of the Brief in Opposition to Petition for Certiorari and one copy of the affidavit of mailing to Fred F. Harris, Jr., attorney for Petitioner, P. O. Box 507, Tallahassee, Florida, 32302, by United States Mail, this 14th day of July, 1982.

Respectfully submitted,

Michael R. Lewis

MICHAEL R. LEWIS,
Counsel for Respondent

295 Azalea Drive
Roswell, Georgia 30075
Tel. (404) 237-2934

Petitioner's Reply Brief

Office - Supreme Court, U.S.
FILED
OCT 29 1982
ALEXANDER L. STEVAS,
CLERK

CASE NUMBER 81-2040

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

W. TAYLOR MOORE, III,

Petitioner,

-vs-

BETTY LOU MOORE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE GEORGIA SUPREME COURT

REPLY BRIEF AND MOTION TO STRIKE

FRED F. HARRIS, JR.
Professional Association
421 E. Call Street
Tallahassee, Florida 32301
(904) 224-5731
Counsel of Record
and

MARK S. LEVINE
Levine & Thompson
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Counsel for Petitioner
and

WILLIAM TERRY PICKREN
Lawson & Davis
2000 Peachtree Cain Tower
Peachtree Center
229 Peachtree Street
Atlanta, Georgia 30303
(404) 588-0505
Counsel for Petitioner

The Petitioner, W. Taylor Moore, III, by and through his undersigned counsel and pursuant to Rule 22.5 of the Supreme Court Rules, replies to Respondent's Brief in Opposition and would make the following contentions:

1. The Respondent relies upon facts not in the record.

2. The Respondent argues amendments to her original petition which were not made until subsequent to rulings on this matter by the Georgia Supreme Court.

3. The Respondent failed to comply with the Supreme Court Rules.

I. THE RESPONDENT RELIES UPON FACTS NOT IN THE RECORD AND THE RESPONDENT RELIES UPON AMENDMENTS TO HER ORIGINAL PETITION WHICH ARE NOT BEFORE THIS COURT.

The Respondent's Brief in Opposition relies upon facts not in the record which are used to implicate the Petitioner as a "bad person". Examples include the following statements:

1. "It would be patently unfair to subject the custodial parent and the minor children in this case, and thousands more like them, to not only the additional expense of such extensive appellate procedures when they are already in financial difficulties, but to the painful frustration of waiting and watching the clock run out on their cause of action as the children reach majority. Such would be the case here if the affluent non-custodial parent...(etc.)" (Page 3)
2. "Petitioner has never visited his children in Georgia." (page 4)

3. "It would be much more burdensome, if not impossible, for Respondent to bring suit in Florida due to her lack of financial resources." (page 6)
4. "For this Court to (review the question of law proposed in the Petition for Certiorari) would impose a burden so great upon Respondent as to effectively prevent she and her minor daughters from seeking justice before the Courts." (page 6)
5. "The non-custodial parent has the necessary resources which he withholds" (page 6)
6. "Petitioner did not pay the amount of child support he was ordered to pay" (pages 6,7)
7. "The financial position of the custodial parent has worsened, while that of the non-custodial parent has improved." (page 7)

Several comments are in order.

1. Financial Information and Visitation: There are no facts before this Court regarding the financial situation of the parties. The Respondent, although alleging dire financial

straits, failed to provide the Court with an affidavit to proceed In Forma Pauperis; she merely filed her Brief in Opposition as if she were proceeding as such and ignored all rules this Court. Further, Respondent did not proceed In Forma Pauperis in the Courts below.

2. Visitation: "Petitioner has never visited his children in Georgia". Again, there is no evidence in the record before this Court whether he did or not, nor is it relevant to the issue before this Court.

3. Litigation in Florida: Respondent alleges that it would be "much more burdensome, if not impossible" to bring suit in Florida where the parties were married, lived and were divorced. In the affidavit of Mr. Moore, evidence that is before this Court, he states that she has used the Florida Courts during the 1980 to litigate claims arising from their dissolution of marriage. (page 39 of Petitioner's Petition for Writ of Certiorari).

Perhaps the most damaging of the Respondent's allegations are her contentions that the Petitioner is in arrears in excess of Thirteen Thousand Dollars in child support payments. That argument must be chronologically dissected to be understood.

a. On September 18, 1981 the Respondent filed a Petition for Domestication of Florida Judgment and Modification of Child Support. (See copy of same on page 20 of Petitioner's Petition for Writ of Certiorari). No mention of arrearages was made in that Petition.

b. On September 21, 1981 the Petitioner, was served a summons to appear before the Fulton County Superior Court. No arrearages were alleged in the papers served upon him.

c. Petitioner filed a Motion to Dismiss for Lack of In Personam Jurisdiction and said Motion was denied on December 14, 1981. (Page 40, Petition for Writ of

Certiorari).

d. Also on December 14, 1981 the lower court granted a stay in the matter and certified the legal issue presently before this Court as "being of such importance to the case that immediate review should be had..." (Page 41, Petition for Writ of Certiorari). Nothing was mentioned in the order regarding arrearages.

e. The Georgia Supreme Court denied the appeal on January 19, 1982 (Page 43).

f. The Petitioner moved for Rehearing and the Georgia Supreme Court denied the Motion for Rehearing on February 3, 1982 (Page 44, Petition for Writ of Certiorari) from which the Petitioner petitioned the United States Supreme Court for a Writ of Certiorari.

g. On February 8, 1982 the Respondent, herein, Betty Lou Moore, filed "Plaintiff's Second Amendment to Petition" in

the Superior Court alleging arrearages on the amount of $12,775. (See page 9 of Respondent's Brief in Opposition).

h. No Georgia Court has considered that claim for arrearages nor is it before this Court. The Second Amendment was filed with the Court after that Court had lost jurisdiction of the case. If there are arrearages the Respondent is in no way foreclosed from requesting a citation of contempt from Leon County Florida Circuit Court for the alleged unpaid obligation. Therefore, Respondents' arguments in that regard are made the in the wrong court.

We believe the attempts to have this Court believe that the Petitioner is in arrears in child support payments and is financially well off, while the Respondent is so destitute as to be unable to defend herself on appeal are a fraud on this Court and are untrue. Judge Hicks would

have never granted a stay if the Petitioner had been in arrears and if the Petitioner was in arrears the Resondent could pursue a Contempt of Court action in Florida and jail the Petitioner. Respondent has not done so because of the irresponsible nature of her allegations.

5. Time Delay - The Respondent complains about the delay this appeal has imposed upon her action. The Respondent suggests that the trial take place first then any appeal be taken. No Court may try a person without jurisdiction to do so. Respondent suggests that the trial court's verdict could be stayed pending any appeal (Page 4). We would argue that if the result is the same (stay pending appeal) then settling the issues at this stage would actually be more expedient. Further, Respondent, if anyone, has caused what delays have occurred by (a) first refusing to file a Brief in Opposition and then (b) Respondent's counsel threatened to withdraw if required to file said Brief and then, (c) finally, by filing her Brief in Opposition

without regard to the Supreme Court Rules. Timeliness has not been a virtue of the Respondent.

II. RESPONDENT COUNTERS JURISDICTIONAL ARGUMENTS NOT RELIED UPON BY THE PETITIONER

Respondent, on the first page of her Brief in Opposition, cites three Supreme Court Rules which do not grant this Court jurisdiction over the issues presented. None of those rules were cited by the Petitioner as giving this Court jurisdiction.

Respondent contends that neither Rules 17.1(a), (b) nor the conflict provision 17.1(c) apply to the case sub judice. There is no issue with respect to said rules as Petitioner has cited none of them as conferring jurisdiction on this Court.

Respondent goes through all the portions of Rule 17 except the one cited as authority for jurisdiction, namely 17.1(c). The Georgia Courts have decided an important question of federal law

which has not been but should be settled by the Supreme Court of the United States. (See page 17 of Petition for Writ of Certiorari).

The Respondent does pinpoint the very issue before this court - whether personal presence in a foreign state can confer in personam jurisdiction on the courts of that state regarding matters unrelated to that personal presence if there are no "minimum contacts" between the foreign state and the defendant. Georgia law holds that personal presence is enough. Humphrey v. Langford, 24 Ga. 732(1980). The Petitioner herein contends that such a rule deprives him of his right to due process of law and the right to travel, especially where the issue is child support, because the Georgia law discourages visitation of the children of the non-custodial parent.

Respectfully Submitted

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CASE NUMBER 81-2040

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

W. TAYLOR MOORE, III,

Petitioner,

-vs-

BETTY LOU MOORE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE GEORGIA SUPREME COURT

MOTION TO STRIKE
RESPONDENT'S BRIEF IN OPPOSITION

COMES NOW the Petitioner, W. Taylor Moore, III, by and through his undersigned counsel, and moves this Court to strike the Respondent's Brief in Opposition and as grounds therefore would state:

1. Respondent's Brief in Opposition does not comply with Supreme Court Rules 22(a) because it does not comply with Rule 33(b) in that it is not in the proper form, does not have a light orange cover, and is not bound as required.

2. The Respondent has not complied with Supreme Court Rule 46 so as to be entitled to proceed In Forma Pauperis in that no motion for leave to so proceed has been filed and no affidavit in the form prescribed in Federal Rules of Appellate Procedure has been filed by the Respondent.

3. Respondent's letter to the Clerk of the Supreme Court dated July 14, 1982 stating that " If at any time in the future, I am able to obtain said affidavit, I will forward it to the Clerk's office." is insufficient to proceed In Forma Pauperis.

WHEREFORE Petitioner prays that this Court strike Respondent's Brief in Opposition.

Respectfully Submitted,

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